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**FTAA - COMMITTEE OF GOVERNMENT REPRESENTATIVES ON THE PARTICIPATION
OF CIVIL SOCIETY**

COVER SHEET

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ISSUES ADDRESSED (Check all that apply)

Agriculture	Subsidies, Antidumping and Countervailing Duties	X
Competition Policy	Civil Society	
Dispute Settlement	Electronic Commerce	
Government Procurement	Smaller Economies	
Intellectual Property Rights	The FTAA Process	
Investment	Other:	
Market Access		
Services		

EXECUTIVE SUMMARY – 2 pages maximum – (see Open Invitation):

In launching the FTAA negotiations, participating countries agreed that among the difficult issues that would be address would be those measures providing what some call contingency protection. Numerous studies, governmental and non-governmental, have taken up the issues of anti-dumping and countervailing duties and the empirical findings are generally well known to most trade policy practitioners and observers.

Also known are the well staked-out policy positions of governments, particularly certain key or large governments. This proposal does not express an opinion one way or the other on the desirability of maintaining or eliminating, overall, measures that provide contingency protection. Suffice it to say that certain countries believe that such measures should be eliminated while other countries believe that such measures remain a necessary part of national commercial policy.

A convergence of views between these two policy positions is probably impossible and is almost certainly impossible in any context below the multilateral level of trade negotiations. Given that fairly stark set of circumstances, the only question of relevance remains: is there anything that can be done in an FTAA that would address both positions and at the same time provide for an outcome that improved on multilateral rights and obligations?

The answer is in the positive.

It is recommended that the FTAA should provide a mechanism, a psuedo-purilateral agreement if you will, whereby certain countries would retain their current regimes while other countries were provided the opportunity to press the liberalization of trade measures forward in a positive direction. Simply put, in the anticipated absence of broad agreement, narrow agreement remains an improvement on the status quo.

The FTAA should provide a schedule of countries that have, either unilaterally or as a consequence of bilateral, or plurilateral, negotiations agreed on the **non-application** of countervailing and/or anti-dumping measures vis-à-vis another Member State of the FTAA. Such a mechanism could be both **reciprocal** and **non-reciprocal** in nature. An example of the former might be agreement between two or more states, codified within the FTAA structure, to exempt each other from countervailing or anti-dumping measures. A practical example of where such an approach, representing a more liberalized discipline on multilateral rights conferred by GATT94, is found in the bilateral agreement between Canada and Chile. An example of a **non-reciprocal** approach, which does not presently exist in a codified form or as an obligation, would be if a large developed country announces a position whereby it voluntarily extinguishes its multilaterally codified right to apply countervailing and/or anti-dumping measures to an other FTAA participant(s). Hypothetically, let's insert Canada in the first part of the equation and the Organization of Eastern Caribbean States in the second part of the equation.

Such a mechanism, since applied strictly on a bilateral basis, would **not require the agreement or consent** of other FTAA participating countries and thus those participants who wished to maintain countervailing and anti-dumping mechanisms in their national commercial codes could well continue to do so. Naturally, it is unlikely (but not impossible given that one of the instruments provided would be a non-reciprocal option) that they would themselves be **beneficiaries** of a liberalized regime.

In a broader and lengthier historical sense, market forces would be applied to the exercise of trade disciplines and perhaps the unequal competitive position of exporters in the region might result in the movement of more and more countries taking advantage of the recommended mechanisms. Simply put, non-participants might find themselves increasingly pressured by their respective exporting communities to re-evaluate their policy positions in light of competing exporters not having to face the additional barrier that contingency protection measures often exert. Thus, the mechanism should be **open-ended** in the sense that countries may inscribe such agreements in a schedule both **during and after** the FTAA negotiations have concluded.

Lastly, there remains scope for FTAA participants to make liberalizing improvements on currently existing multilateral rights and obligations and the recommended provision provides, without specific suggestion, **placeholders** for such possible agreement.

The recommendation contains a draft TEXT of such a provision.